IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 333 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LILABEN MAHENDRABHAI CAHUHAN

Versus

STATE OF GUJARAT

Appearance:

MR MAHENDRA K PATEL for Petitioner

MR SP DAVE APP for Respondent No. 1

MR LR PATHAN for Respondent No. 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/04/2001

ORAL JUDGEMENT

1. The present petitioner- original informant injured eyewitness has preferred this Criminal Revision Application under Section 397 of the Code of Criminal

Procedure, 1973 (for short "Code"), challenging the judgement and acquittal order dated 21st March, 2000 recorded by the learned Special Judge, Court No. 22, Ahmedabad City in Atrocity Criminal Case No. 55/99, under which, the learned trial Judge recorded an order of acquittal of respondent Nos. 2 and 3 here from the offences punishable under Section 3(1)(10) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1988 as well as from the offences punishable under Sections 323 and 504 of the Indian Penal Code.

2. The facts of the case before the trial Court may be briefly stated as follows :-

That on 18.7.1999 at about 11 a.m. the son of respondent no. 2 was exchanging abusive word with other boys in front of the residence of the present petitioner, which is situated in Bapunagar area in Ahmedabad City. The present petitioner asked them not to use abusive words at which, the respondents arrived there and had given abusive words to the petitioner. That the abusive language used by the respondents amounted to insulting of the petitioner with respect to her caste. The petitioner has claimed that she belongs to Schedule Caste and abusive words utilised by the respondents amounted to the disrespect towards her caste. It is also contended that she was beaten and therefore, FIR was lodged by the petitioner for the aforesaid offence against the present respondents.

3. After investigating into the matter, the investigating police officer submitted chargesheet against the said respondents for the aforesaid offences. The present respondents were supplied with copies of police papers and charge in respect of the aforesaid offences was framed and it was read over and explained to the respondents. They pleaded no guilty to the said charge and therefore, learned trial Judge recorded evidence of the prosecution. After conclusion of the evidence, the learned Trial Judge recorded further statements of the these respondents under Section 313 of the said Code, providing them an opportunity to explain the evidence appearing against them. The respondents pleaded not guilty and submitted that a false FIR has been lodged against them and false case has been made out against them. They have not examined any evidence and they have not tendered evidence on oath. The learned Trial Judge heard the arguments and thereafter, found that the offences have not been established against the respondents and therefore, the learned trial Judge

acquitted the present respondent Nos. 2 and 3 from the aforesaid offences.

4. Feeling aggrieved by the said judgement and acquittal order of the learned trial Judge, the present petitioner being the original informant has preferred this revision application before this Court. It has been mainly contended that the judgement and acquittal order of the learned trial Judge are illegal and erroneous. That the learned trial Judge did not appreciate the evidence in the legal manner and therefore, the jundgemnt and order of the trial Court are illegal and erroneous and deserve to be set aside. It is therefore, prayed that the present revision application be allowed, the judgment and acquittal order of the learned trial Judge be set aside and the present respondents be ordered to be convicted and sentenced for the aforesaid offences.

5. Notice was issued at the first instance and Mr. L.R. Pathan, learned advocate appears on behalf of contesting respondents Nos. 2 and 3, whereas, Mr. S.P. Dave, learned APP appears for the State of Gujarat respondent no. 1. I have heard the learned advocates for both the parties and have perused the papers. In fact, learned advocate appearing for the petitioner has taken me through the judgement and reasoning recorded by the learned trial Judge while acquitting the present respondent nos. 2 and 3.

6. It is well settled that this court while exercising revisional jurisdiction has very limited power and jurisdiction. It has been laiddown in case of State of Gujarat Vs. Mansukhlal Lovchand Choksi reported in 1993(2) GLH 849 that the Appellate Court should be slow and reluctant to interfere with the acquittal judgement and it cannot be interfere with unless the judgement of the trial Court is perverse.

7. When the appellate court hearing acquittal appeal, has to be slow then the revisional court, having acquittal revision has to be slower while interfering with the acquittal judgement before it.

8. It would also be relevant to consider the said judgment from a different angle. It has also been laiddown that when appellant court concurs with the logic and reasoning of the trial Court and confirms the same, it does not require to give a detailed and lengthy reasoning in support of the same. I have heard the learned advocates for both the parties and after considering the evidence I am of the opinion that the

learned trial Judge has not committed any illegality in appreciating the evidence and therefore, it is not necessary to give detailed reasons for confirming the said finding of the trial Court.

9. However, learned advocate for the petitioner has argued the matter at length and therefore, it would be proper to deal with the points of arguments raised by him.

10. The learned advocate for the revision petitioner has submitted that there is a evidence of injured informant - Lilaben Chauhan at Ex. 7 and her evidence has not been properly appreciated by the trial Court. Now, it would be relevant to consider the evidence of this witness. There is no dispute that according to the prosecution case, she is an injured eye-witness. It is required to be considered that according to the evidence tendered by this witness, the respondents had given abusive words to her at relevant point of time. It is also her case that incident took place in a public place. She has also deposed that 15 to 20 persons had gathered together. However, she was not in a position to name any of those posible witnesses. It is very clear that the incident took place in a public place and many person had gathered together. However, no independent witness has been examined as eyewitness in support of the evidence of this witness. Even the investigating officer has stated that he has not recorded any statement of the neighbouring witness. The learned advocate for the revision - petitioner has argued at length that it was the duty of the investigating officer to record the statements of the neighbours. Now, if the revision petitioner or some one else does not disclose the name of the eyewitness residing in the neighbourhood, then the investigating officer would not go in search of eyewitness by examining so many persons residing in the neighbourhood. It is not the case of the revision petitioner that names of the eyewitnesses were disclosed in the FIR or the statement given to the police investigating officer, if no name was disclosed by the informants or by the eyewitness, then the investigating officer could not have recorded the statements of those witnesses. Any way the position is that there were independent eyewitness present at the time of offence and yet they have not been examined in support of the informant.

11. Then Lilaben Chauhan has deposed at para 1 of her deposition ex. 7 that respondent no. 1 had given slap to her. The learned advocate for revision petitioner has

argued that her evidence has been supported by medical evidence. Therefore, we turn to the evidence of Dr. Nirav Chaudhary at ex. 14. He has deposed before the Court that injured Lilaben was brought to him at 9.25 p.m. on 18.9.1999. That at that time, the informant Lilaben had told him that she had received injury at her left ear as well as on right Thai. Now so far injury on the ear is concerned, he has deposed that there was no external mark of injury. He has also stated that there was some injury inside the ear of Lilaben, but it was examined by the ENT surgeon. The ENT surgeon has not been examined and his name has not been disclosed in the chargesheet. Therefore, the Doctor who examined the injury inside the ear of Lilaben has not been examined and this witness Dr. Nirav Chaudhary does not know anything about the injury inside of the ear of Lilaben and therefore, there is a missing link in respect of the injury sustained by Lilaben inside her ear.

13. The examination of the ENT surgeon would be on the point as to whether the injury inside the ear was fresh or not. If, there was external injury then any mark of injury would be notified on the ear itself. There is no evidence to show that there could be any internal injury without any external mark of injury on the ear. Therefore, the case of the prosecution with respect to the injury is not free from doubt.

13. Now, so far the injury on right Thai is concerned, it is very clear that the revision petitioner has not said anything about this injury during the course of her evidence and Dr. Nirav Chaudhary has not said anything regarding the external mark of said injury and therefore, it cannot be said that the medical evidence with respect to this injury supported the case of the prosecution.

14. Now, we turn to the evidence of another witness Revaben Chauhan at ex. 10. She is the mother-in-law of the injured eyewitness Lilaben. She has also deposed that respondent no. 2 had given slap on the face of Lilaben but as said above, the said evidence has not been corroborated by medical evidence referred hereinabove.

15. Then it is required to be considered that so far deposition of Lilaben at ex. 7 is concerned, she has stated that the respondents had said, "Dhedha go inside otherwise, will not leave you". Now, so far the deposition of mother-in-law Revaben at ex. 10 is concerned, she has not stated that the respondents had used above words at the spot and therefore, there is

contradiction in evidence of these two witnesses on one hand and on the other hand, the aforesaid evidence of Lilaben has not been supported by the evidence of Revaben.

16. Therefore, it is clear that there is contradiction between the statements of fact made in the FIR and oral evidence of Lilaben.

17. So far other witnesses are concerned, we find the evidence of Ishwarbhai at Ex. 11, who was working as PSI in the concerned police station. He has stated that he was not present when the incident took place and therefore, he could not throw any light on the fact of the case.

18. Then witness no. 4 is Dr. Nirav Chaudhary at ex. 14, whose evidence has been referred hereinabove. There is no other evidence produced on record.

19. Looking to the evidence of Lilaben and her mother-in-law Revaben at Exhs. 7 and 11 respectively, it is clear that both these two witnesses have given contrary version and their evidence does not get corroboration from the medical evidence. It is clear that the incident took place in a residential locality and there was availability of independent witnesses, who have not been examined. Therefore, when there was availability of independent evidence and if they have not been examined, the trial Court has not committed any mistake in appreciating the evidence.

20. Then another aspect of the case is that informant herself has admitted during the course of her cross examination that the respondents nos. 2 and 3 had first gone to the police station and recorded NC complaint against her. That they were called at the police station in connection with the said NC complaint and therefore, the aforesaid FIR was filed by her. It is clear that the revision petitioner was not first in filing FIR before the police station but she filed the FIR only when she knew that respondents Nos. 2 and 3 had filed NC complaint against her. This is also a point to be considered for appreciation of evidence on record.

21. As said above, this being a revision application, it would not open to this court to reappreciate the evidence unless it is found that the appreciation of evidence by the trail Court is illegal and perverse. The trial Court has appreciated the evidence of the witnesses. It cannot be said that the said appreciation

is illegal. As said above, the eyewitnesses have not supported the case of the prosecution.

22. Learned advocate for the revision petitioner has also argued that it was the duty of the investigating officer to examine other witnesses. Now, the learned advocate for the contesting respondent Nos. 2 and 3 has made it clear that he had received and read the copy of the chargesheet and on going through the same, he has found that the eyewitnesses have been examined by the investigation officer but the said witnesses have not supported the case of the prosecution.

23. Then it has been argued that it was the duty of the investigating police officer to record the statements of other witnesses and the investigating officer has not recorded the statements of the neighbours. Now, it is an admitted position that neither Lilaben nor Revaben-mother-in-law disclosed the name of eyewitness and therefore, it cannot be said that the investigation officer had committed something wrong while not recording the statements of the neighbour, and therefore, there is no lapse on the part of the investigating officer.

24. For the reasons stated hereinabove, it cannot be said that the judgement and acquittal order of the trial Court are illegal and perverse. The finding recorded by the Trail Judge is not against the evidence on record. Therefore, even, if anyother view is possible, it is not open to this Court, in exercise revisional jurisdiction, to substitute its own view for the view adopted by the learned Trial Judge.

25. Suffice it to say that there is no merit in the present Criminal Revision Application and hence it deserve to be dismissed.

26. In the result, this Criminal Revision Application is ordered to be dismissed.

(D.P. Buch, J.)

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